

ALTEX OIL COMPANY

IBLA 77-265

Decided September 2, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring additional rent prior to issuance of noncompetitive oil and gas leases U-35939 and U-35941.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases to be issued for a regular over-the-counter offer where the offer was filed prior to the effective date.

APPEARANCES: Cecil C. Wall, President, Altex Oil Company.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Altex Oil Company appeals from the February 14, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), requiring the payment of additional rental before further action is taken on pending noncompetitive oil and gas lease offers U-35939 and U-35941. The offers were filed on November 24, 1976, and were accompanied with the first year's rental at the rate of 50 cents per acre. Before leases were issued on appellant's offers, the rental rate for noncompetitive oil and gas leases was increased to \$1 per acre, for all leases issued after February 1, 1977, by amendment to 43 CFR 3103.3-2. 43 F.R. 1032 (January 5, 1977).

Appellant argues that the delay in issuance of the leases was solely the fault of BLM and that therefore its lease offers should not be subject to the rental increase. We disagree.

[1] The precise issue raised by appellant was answered by the Board in Raymond N. Joeckel, 29 IBLA 170 (1977). We have subsequently affirmed that decision many times. E.g., Brad J. Hays, 31 IBLA 374 (1977); Wanda C. Scheidt, 30 IBLA 346 (1977); Milton J. Lebsack, 29 IBLA 316 (1977). These decisions held that rental for oil and gas leases issued after February 1, 1977, must be paid according to the increased rate, regardless of when the lease offer was submitted to BLM. As the Secretary of the Interior stated: 1/

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977 have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued.

Therefore, appellants were properly required to pay the increased rental. See Hannifin v. Morton, 444 F.2d 200 (10th Cir. 1971); Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ Excerpt from letter of February 1, 1977, by Secretary Cecil B. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon and quoted in Milton J. Lebsack, *supra*.

